

been easily discoverable by the truck driver and apparently was noticed by some employees because their talking about it called the inspector's attention to the matter. Therefore, I find that the operator is chargeable with at least moderate negligence because, at a minimum, it is chargeable with negligent training and supervision for the failure of its employees to correct this condition. I also note that the violation was abated by simply drying out the brakes. No other repair was required. Before leaving this subject, I specifically reject the operator's argument that the emergency brake or parking brake being in an operable condition is sufficient to satisfy the regulatory requirement that "[p]owered mobile equipment shall be provided with adequate brakes."

Citation No. 2247379 alleges a "significant and substantial" violation of the standard at 30 C.F.R. § 57.9053 and charges as follows:

Water was allowed to accumulate which created a hazard to moving equipment.

The cited standard requires that water which creates a hazard to moving equipment be removed.

According to the undisputed testimony of Inspector Ruffner, who likewise issued this citation on March 5, 1985, after he had issued Citation No. 2247378 concerning the truck with no brakes, the operator continued to load the other haul truck in the water which existed in the stockpile bin area. The danger according to the inspector being that the brakes would get wet and suffer the same consequences as they had on the No. 2 haul truck, which had been written up two hours earlier. Under the circumstances, as before, if a vehicle was operating in a congested area with no brakes, an accident was reasonably likely to occur resulting in disabling or even fatal injuries. Accordingly, I find the violation to be "significant and substantial." Mathies, supra.

On the issue of negligence, the water had been in the area under the stockpile bins that morning because of a drain being stopped up. Respondent produced testimony that this was the first time this drain had ever backed up. In order to abate the citation, they pumped the water out and then opened the drain. I concur with the inspector that the operator is certainly chargeable with the knowledge that the water was there at the time it existed, and of the consequences of operating the haul trucks in the water. I therefore find the operator chargeable with a "high" degree of negligence, as alleged in the citation.